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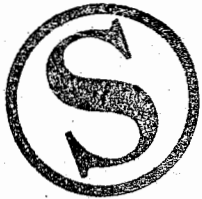
उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(39)

मामला क्रमांक C.A. No. - 909/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<u>SB: HON'BLE SHRI DHIRENDRA MISHRA, J.</u> <u>APPELLANTS</u> <u>(IN JAIL)</u> 1. Raghunath S/o Motiram, aged about 22 years, R/o Nayamunda, P.S. Bodhghat, Jagdalpur Bastar (CG) 2. Dharmu Ram, S/o Dhanar, aged about 26 years R/o Nayamunda, P.S. Bodhghat, Jagdalpur, Bastar (CG) <u>VERSUS</u> <u>RESPONDENT</u> State of Chhattisgarh, through Police Station, Bodhghat, Jagdalpur, Bastar (CG) <u>29-11-2007</u> Shri Vijay Deshmukh, Advocate for the appellants. Shri Neeraj Mehta, Panel Lawyer, for the State. This criminal appeal is directed against the judgment of conviction and order of sentence dated 27-10-2005 passed in S.T. No. 299/2004 whereby learned 4th Additional Sessions Judge, (FIC), Bastar at Jagdalpur has convicted the appellants under Sections 148 read with Section 149, 307 read with Section 149, 325 read with Section 149 and 323 read with Section 149 of I.P.C. and each of them has been sentenced to undergo R.I. for 1 year, R.I. for 10 years, R.I. for 2 years and R.I. for six month respectively. 2. Case of the prosecution in brief is that Prahlad and his brother had gone to Orissa to seek explanation about the incident of eve teasing with the wife of injured witness Prahlad whereupon they were beaten by people of Jhijnjhir on account of above animosity. On 24-	



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	10-2003 when Prahlad, Domo and Laxman went to Jagdalpur to settle the matter by compromise with the accused persons, accused persons assaulted them by Gupti, iron rod and club as a result of which, Laxman (P.W. 6), Subbu Manjhi (P.W. 7) and Prahlad (P.W. 2) sustained grievous injuries. Report of the incident was lodged on 24-10-2003 by Rojo, wife of Prahlad whereupon Dehati Nalishi Ex. P-1 was recorded and on the basis of the Dehati Nalishi, F.I.R. of Ex. P-26 was recorded on the same day. During investigation, injured persons were sent for medical examination to Maharani Hospital, Jagdalpur where Dr. K.M. Gupta (P.W. 5) examined Prahlad, Domo and Subbu Manjhi and gave his medical examination report of Ex. P-10, Ex. P-12 and Ex. P-13. They were also sent to radiologist and reports of the radiologist pertaining to Prahlad is Ex. P-7, Laxman is Ex. P-8 and Subbu Manjhi are Ex. P-9 given by Dr. Govind Tiwari (P.W. 4). Weapon of offence was taken into possession on the memorandum of accused persons. After completing the investigating, charge sheet was filed in the Court of Chief Judicial Magistrate, Jagdalpur against the appellants and two others namely Dharmu and Kailash showing them absconding. 3. During trial, prosecution examined 11 witnesses in all and thereafter statement of accused was recorded in which they denied the evidence appearing against them in the prosecution case and pleaded innocence and false implication however, the trial Court convicted and sentenced the appellants as mentioned in para 1 of	



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	this judgment and acquitted accused Laiban and Deepak of all the charges by extending them benefit of doubt. 4. Learned counsel for the appellants argued that in the Dehati Nalishi of Ex. P-1 and F.I.R. of Ex. P-26, name of the accused Dharmu is missing. From perusal of the dying declaration of Ex. P-25, it is clear that allegation of assault has been made against Kailash and Laiban of Orissa. There is no evidence that the appellants in furtherance of common object of assaulting the injured persons participated in the crime and caused injuries to Prahlad, Laxman and Subbu Manjhi as there is no motive attributed to the appellants for commission of crime. Seizure memo and seizure of weapon have not been proved as the witnesses of seizure memo and seizure of weapon have not supported the case of the prosecution. Reliance is placed on <u>Chanda & others -v- State of U.P. and another</u>¹. 5. On the other hand, learned counsel for the State supporting the impugned judgment argued that the injuries sustained by Prahlad described in para 10 of the judgment were sufficient to cause his death in the ordinary course of nature. Injuries have been caused by lethal weapon Gupti, iron rod and club. The injured eye-witnesses Prahlad, Subbu Manjhi and Laxman have categorically stated about participation of the appellants in the aforesaid crime. Perpetrators of	

¹ 2004(2) CGLJ 147 (SC).



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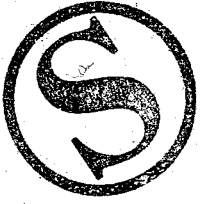
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	offence were 5 in number. Offence was committed with common object of avenging the earlier incident and in these circumstances, the finding recorded by the Court below is just and proper. 6. I have heard learned counsel for the parties. I have perused the record as also the impugned judgment. 7. Conviction of the appellants is based on the evidence of P.W. 2 Prahlad, P.W. 6 Laxman and P.W. 7 Subbu Manjhi who were injured in the said incident, their medico legal examination report has been duly proved by Dr. K.M. Gupta (P.W. 5) who has found 8 incised injuries over parietal region, left forearm, stomach, left ribs as described in para 10 of the judgment and injury report of Ex. P-10. This witness was also sent to radiologist and Dr. Govind Tiwari (P.W. 4) has proved the fracture injury of ulna bone vide his report of Ex. P-7. P.W. 6 Laxman has also sustained incised injuries on right frontal parietal region of head and incised wound over shoulder and in his X-ray examination report of Ex. P-8, fracture of joint Tibia was noticed. Injured Subbu had also sustained incised wound over right occipital region of forehead in size of 1 x ½ x ½ cm. He had also sustained contusion on his back in size of 10 x 3 cm apart from the abrasion wound on his back. Abrasions were present on his chest in size of 16 x ½ cm and 15 x 7 cm. 8. Thus in view of the above injuries sustained by Prahlad which have been duly proved by Dr. K.M. Gupta and statement of injured	



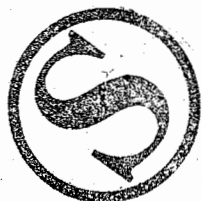
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	witnesses, offence under Section 307 of I.P.C. is made out. Similarly, on the injuries sustained by other two injured witnesses, offence under Section 148, 325 and 323 is also made out. 9. P.W. 1 Rojo has proved the Dehati Nalishi of Ex. P-1 and F.I.R. of Ex. P-26 and has stated that the appellants assaulted her husband on his head and hand as a result of which hand of her husband was broken and rod was fixed in his hand and she had lodged report of Ex. P-1 on the same day. Her husband was admitted in Jagdalpur Hospital and underwent treatment. There is no cross-examination of this witness. 10. P.W. 2 Prahlad has deposed that there was dispute in the past in relation to eve teasing with the wife of his brother in Orissa. One week after the previous incident, he went to the house of accused Laiban with intention to compromise where appellant Raghunath assaulted him by a Gupti on his stomach, left hand and appellant Dharmu assaulted him by rod over his head. He was thereafter admitted in Maharani Hospital, Jagdalpur. In the cross-examination on behalf of the appellants, the defence could not elicit anything which makes the statement of this witness untrustworthy or unreliable. He has categorically denied the suggestion that at the time of incident, the appellants were not present and he has further denied that because he has entered into a compromise with accused Deepak and Laiban, therefore he is not stating truth.	



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	11. P.W. 6 Laxman has also narrated in the similar line and has stated that appellant Dharmu was holding Gupti, whereas Raghunath was holding rod and he assaulted on his left portion of head twice and Dharmu assaulted by Gupti on his left shoulder. He has denied the suggestion that he is speaking falsehood out of animosity and that he is not telling truth as they have compromised with other accused persons. There are some omissions which are not of such a serious nature that makes the version of this witness unreliable. 12. Subbu Manjhi (P.W. 7) is also an injured witness. He has also stated that accused persons were armed with weapon Gupti and iron rod. Dharmu first assaulted Laxman with Gupti and thereafter he assaulted him and Prahlad. His version is duly corroborated from medical evidence. 13. It is true that these three witnesses have not made any allegation against the acquitted accused Laiban and Deepak and thus they have resiled from their diary statement in this regard, however their evidence cannot be discarded solely on this ground that they are partially unreliable and their version can be accepted to the extent they are corroboratory from their past statement. 14. So far as the arguments of learned counsel for the appellants that name of the accused Dharmu is not mentioned in F.I.R. is concerned, the report has been lodged by Rojo (P.W. 1) who is not the	

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	eye-witness to the incident. Therefore, omission of the name of appellant Dharmu in Dehati Nalishi and F.I.R. does not help the appellant Dharmu. In the dying declaration of Ex. P-25 there are specific allegations against both the appellants regarding assault and so far as the evidence of common object is concerned, from the evidence of P.W 2 Prahlad and P.W. 1 Rojo motive for the offence is established. 15. In the matter of Chandra and others¹, considering the applicability of Section 149 of I.P.C., it has been held that mere presence in unlawful assembly will not render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141 and where the common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149 of I.P.C. However, in the instant case, from the evidence available on record, it is clear that injured Prahlad and his wife Rojo have categorically deposed the background in which the appellants and their other associates who were more than 5 in number assaulted the accused persons with a common object of taking revenge due to past incident. There is evidence of participation of the accused persons in the offence and, therefore, argument of the learned counsel for the appellants based on the above judgment cannot be accepted.	



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	16. Fourth argument of the counsel for the appellants that the witnesses of seizure memo and seizure of weapon have not supported the case of the prosecution and thus the seizure memo and seizure of weapon is not established from the testimony of the injured eye-witnesses is concerned, failure of the prosecution in establishing the seizure will not affect the prosecution case in any manner. 17. On the basis of aforesaid analysis, it is established that the prosecution has proved the case against the appellants beyond reasonable doubt and the trial Court has not committed any illegality or infirmity in convicting the appellants and sentencing them as mentioned above. 18. The appeal being devoid of substance is liable to be dismissed and is hereby dismissed.	Sd/- Dhirendra Mishra Judge